

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Application of California-
American Water Company (U 210 W) for
Approval of the Monterey Peninsula Water
Supply Project and Authorization to Recover
All Present and Future Costs in Rates.

A.12-04-019
(Filed April 23, 2012)

**MARINA COAST WATER DISTRICT'S RESPONSE
TO THE MOTION OF WATER PLUS TO
DISMISS THE PROCEEDING**

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Date: October 16, 2015

In accordance with Rule 11.1 of the Commission's Rules of Practice and Procedure and the October 9, 2015 email Ruling Regarding Responses to Water Plus Motion to Dismiss by Administrative Law Judge Burton Mattson ("ALJ"), Marina Coast Water District ("MCWD") respectfully submits its Response to the October 1, 2015 motion of Water Plus to dismiss this proceeding ("Motion") due to its stated observation of "data tampering" in Figure 37 of Appendix E2 to the Draft Environmental Impact Report ("EIR") for the proposed Monterey Peninsula Water Supply Project ("MPWSP") that was released by the Commission's Energy Division on April 30, 2015. (Motion, p. 4.)

Dismissal is a particularly harsh sanction. In determining whether to grant the relief requested by Water Plus, it will be for the Commission to determine whether there is merit to the matters raised in the Motion, and on that basis to decide whether the continuing processing of the instant application is in the public interest. (*See Applications of Air California and Pac. Southwest Airlines* (Cal. P.U.C. 1971) 71 CPUC 798 ("D.78276"), Order Continuing Hearing; Consolidating Applications; and Setting Prehearing Conference at *2-3, *citing Ashbacker Radio Corp. v. Federal Communications Comm.* (1946) 326 U.S. 327.) Likewise, it is for the Commission to determine whether the application is consistent with Commission policy or not. (*Application of Western Gas Resources-California, Inc., for a Certificate of Public Convenience and Necessity to Provide Public Utility Gas Transmission and Distribution Services Through the Use of Certain Existing Facilities and to Construct Additional Interconnection Facilities* (Cal. P.U.C. 1999) 1999 Cal. PUC LEXIS 856 ("D.99-11-023"), Opinion Dismissing Without Prejudice Western Gas Resources-California, Inc.'s Application for a CPCN at *3.) If, upon investigation, the Commission determines that Cal-Am's representations or presentations to the Commission have been false or misleading, the

Commission must determine the course of action that is in the best interests of the public, the parties and Cal-Am's ratepayers.

MCWD has carefully reviewed the Motion and Appendix E2. Based on the information available to it, MCWD cannot confirm that any data was tampered with. However, MCWD does believe that Figure 37 and the related discussion in Appendix E2 have the strong potential to mislead because (1) data points for the 900-FT, 400-FT and 180-FT/180FE aquifers are presented solely collectively and (2) temporal residuals were not evaluated for each well. MCWD believes that to avoid the potential of misleading, the presentation of Figure 37 and the related discussion must be revised and updated to include separate simulations for each aquifer and to evaluate temporal residuals. Moreover, the full data set considered in revising and updating the simulations should be made available to the parties upon request at the time the revised and updated simulations are released, consistent with the comments on the environmental review process set forth in MCWD's letters of July 29 and September 3, 2015 to Ms. Borak of the Energy Division.

MCWD is also concerned by the misleading statement in Cal-Am's response that Geoscience remains *the Commission's* consultant, rather than Cal-Am's own consultant (Cal-Am Response, p. 2), after the July 9, 2015 Notice to All Parties by the Commission's Energy Division clearly stated that Geoscience "will not do any more work for the Commission on this project" and that the work of Geoscience would now be considered by the Commission "as if it had been performed by the proponent, Cal-Am." (July 9, 2015 Notice, pp. 1, 2.) Moreover, in MCWD's view, Cal-Am's response needlessly maligns Water Plus for bringing a Motion that is apparently founded on a sincere and good faith concern with the integrity of the data presented to the parties and the public in this proceeding. (Cal-Am Response, pp.

3-4.) Cal-Am's assertion that the Motion "demean[s]" the work of the Commission over the past decade is a particularly egregious instance of "the pot calling the kettle black," when Cal-Am itself more than four years ago chose to abandon the Regional Desalination Project that the Commission approved in D.10-12-016, fifteen years after the State Water Resources Control Board first ordered Cal-Am to reduce its pumping from the Carmel River in Order WR 95-10. The Commission should not condone Cal-Am's tactic of attempting to smear those parties who raise questions about its application.

The Commission should not be distracted by Cal-Am's failure to support its attack on the Motion with any specific response to the statistical analysis that is presented by Water Plus. The Commission and its staff must evaluate the Motion on its merits. To the extent that the Commission believes Cal-Am has made deceptive or misleading statements that could constitute a violation of the Commission's rules, or justify the sanction of dismissal, the Commission should undertake the appropriate investigation of any such potential violation.

DATED: October 16, 2015

Respectfully submitted,
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